

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRY NEIL BOWLING,

Petitioner,

Case No.:16-cv-12132

Honorable Linda V. Parker

v.

CONNIE HORTON,

Respondent,

OPINION AND ORDER: (1) GRANTING MOTION TO LIFT THE STAY OF PROCEEDINGS AND ORDERING THE CLERK OF THE COURT TO REOPEN THE CASE TO THE COURT'S ACTIVE DOCKET, (2) AMENDING THE CAPTION, (3) GRANTING THE MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS, (4) ORDERING THAT THE AMENDED PETITION (ECF NO. 12) BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND (5) DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5 MATERIALS IN THIS CASE

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which was held in abeyance to permit petitioner to return to the state courts to exhaust additional claims. Petitioner filed a motion to lift the stay of proceedings and to amend the petition for writ of habeas corpus, which is GRANTED.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner following the exhaustion of state court remedies. *See e.g. Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559-60 (E.D. Mich. 2009). Petitioner alleges that his claims have been exhausted with the state courts. Therefore, the Court orders that the case be reopened.

The Court also orders that the caption in this case be amended to reflect that the proper respondent in this case is now Connie Horton, the warden of the prison where petitioner is currently incarcerated. *See Edwards v. Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); *see also* Rule 2(a), 28 foll. U.S.C. § 2254.

Finally, the Court grants petitioner's motion to amend his habeas petition. Petitioner's proposed amended habeas petition should be granted because it advances claims that may have arguable merit. *See e.g. Braden v. United States*, 817 F.3d 926, 930-31 (6th Cir. 2016).

The Clerk of the Court shall serve a copy of the amended petition for writ of habeas corpus (ECF No. 12), and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases. *See Coffee v. Harry*, No. 04-71209, 2005 WL 1861943, at *2 (E.D. Mich. Aug. 2, 2005). Respondent shall file an answer within one hundred and eighty (180) days of the Court's order. *See* Rules Governing § 2254 Cases, Rule 4. Respondent is also ordered to provide this Court with the Rule 5 materials at the time that it files its answer. *See Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Petitioner has forty-five (45) days from the receipt of the answer to file a reply brief, if he so chooses. *See* Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

ORDER

IT IS ORDERED THAT:

- (1) The motion to lift the stay of habeas corpus proceedings is **GRANTED**. The Clerk of the Court shall reopen the habeas petition to the Court's active docket.
- (2) The caption of the case is amended to reflect that Connie Horton is the proper respondent in this case.
- (3) The motion to amend the petition for writ of habeas corpus is **GRANTED**.
- (4) The Clerk of the Court shall serve a copy of the amended petition for writ of habeas corpus [ECF No. 12] and a copy of this Order on Respondent and the Attorney General by first class mail.
- (5) Respondent shall file an answer and produce the Rule 5 materials within **one hundred and eighty (180) days** of the date of this order.
- (6) Petitioner shall have **forty-five days** from the date that he receives the answer to file a reply brief.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: February 26, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, February 26, 2018, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager